

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**IN RE: VALSARTAN PRODUCTS
LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875-RBK-JS

TELEPHONIC ORAL ARGUMENT

Mitchell H. Cohen Building & U.S. Courthouse
4th & Cooper Streets
Camden, New Jersey 08101
June 17, 2020
Commencing at 4:00 p.m.

B E F O R E:

THE HONORABLE JOEL SCHNEIDER,
UNITED STATES MAGISTRATE JUDGE

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25 Proceedings recorded by mechanical stenography; transcript produced by computer-aided transcription.

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1 (PROCEEDINGS held via teleconference before The Honorable Joel
2 Schneider, United States Magistrate Judge, at 4:00 p.m.)

3 THE COURT: Good afternoon, everybody. This is Judge
4 Schneider. This is the matter of Valsartan. This is the
5 Valsartan MDL, Docket Number 19-2875. Today is June 17th. We
6 are proceeding by conference call, obviously, because of the
7 coronavirus situation.

8 I think it's impractical to get the names of
9 everybody on the call. Let's get the names of lead counsel.
10 But I would caution everyone, whoever is going to talk during
11 this conference call, please announce your name first so the
12 very competent court reporter can accurately reflect who is
13 talking.

14 So who is present for the plaintiffs?

15 MR. GOLDBERG: Hello, your Honor. Adam Slater for
16 plaintiffs.

17 MR. HONIK: Ruben Honik for plaintiffs.

18 MS. WHITELEY: Conlee Whiteley for plaintiffs. Good
19 afternoon, your Honor.

20 MR. NIGH: And Daniel Nigh for plaintiffs. Good
21 afternoon, your Honor.

22 THE COURT: Okay. And for defendants?

23 MR. GOLDBERG: Good afternoon, your Honor. This is
24 Seth Goldberg for the ZHP parties and defendants, and joining
25 me today are my colleagues from Duane Morris, Joe Ferretti and

1 Rebecca Bazan, who will be helping me out on the ESI search
2 term and sales and pricing issues.

3 THE COURT: Terrific.

4 Okay. And anyone else want to enter their
5 appearances for the defendants?

6 MS. JOHNSTON: Yes. Good afternoon, Your Honor.

7 This is Sarah Johnston for the retailer defendants.

8 MR. GEOPPINGER: Good afternoon, your Honor. This is
9 Jeff Geoppinger, G-E-O-P-P-I-N-G-E-R, for the wholesaler
10 defendants.

11 MR. TRISCHLER: Your Honor, good afternoon. Clem
12 Trischler on behalf of the Mylan defendants.

13 MS. LOCKARD: Good afternoon, your Honor. It's
14 Victoria Lockard for Teva, and with me I have Brian Rubenstein
15 on the line as well.

16 THE COURT: Okay. Like I said, there might be other
17 people who talk during this call, and if you could just
18 announce your names before you talk so the court reporter can
19 take it down, that would be great.

20 My law clerks should be on the line, as well as two
21 interns who are working with us this summer in chambers.

22 I scratched out an agenda for this phone call. The
23 main event is the search term dispute, but if you'll bear with
24 me, there are a couple of miscellaneous issues I'd just like
25 to address to get out of the way, and then we could focus on

1 the main event.

2 One of the things I like to do is just to make sure
3 we're all on the same page in terms of the scheduling, so I
4 made some notes about what we have on tap for the foreseeable
5 future, anyway, and I hope it's consistent with your
6 recollection.

7 At the conference at the latter part of this month,
8 June 24, we're going to argue the "macro discovery issues"
9 involving the downstream defendants. I saw that the briefs
10 came in last night. Hopefully, we'll get a ruling on that
11 date, but it remains to be seen after we digest the briefs.

12 July 15 is the start date for the defendants' rolling
13 production of documents/ESI. I've already advised the parties
14 that that date is not going to change, no matter how many
15 disputes we have, as well as the November 29th, '20, date for
16 the completion of the document ESI production, along with the
17 periodic productions or the rolling productions during that
18 time frame.

19 July 17, the defendants' motions to dismiss are going
20 to be filed. And, of course, we have the briefing schedule on
21 that, which takes us into the fall.

22 And we have another conference call scheduled a month
23 from now, on July 15. I have in my notes, and we'll talk
24 about this, we're going to finalize all the fact sheets by
25 that date, but we'll talk about that.

1 So, if things go according to plan, we'll get to all
2 these disputes, and by, at the latest, November, all the
3 documents should be produced, and I would anticipate once we
4 get through these issues, the sales and pricing, the search
5 term issues, what have you, we can start to talk about a
6 deposition protocol, who's going to be deposed, where, when,
7 how, et cetera, et cetera.

8 So that's the chronology that I have in my notes.

9 With regard to some of the issues, it's great that
10 the parties have been able to work that out. It's terrific
11 that we finally straightened out all of those allegedly
12 deficient Short-Form Complaints, so that issue is moot.

13 I saw in the papers that the parties are talking
14 about the plaintiffs' fact sheets, and that issue may be teed
15 up for an order to show cause by the end of the month, but as
16 I read the papers, it looks like there is nothing to discuss
17 during this call about the fact sheets. Mr. Goldberg, am I
18 right about that?

19 MR. GOLDBERG: You're correct, your Honor.

20 THE COURT: Okay. Great.

21 With regard to the sales and pricing disputes, my
22 notes indicate we talked about that on June 3rd. My notes
23 indicate that ZHP and Mylan were supposedly going to
24 supplement their productions within 30 days. Again, according
25 to my notes, and we can talk about this, we were going to

1 address any disputes that remain at the late July conference.
2 I know that Mr. Slater's letter wanted to address certain
3 issues now. I'm not inclined to do it on this phone call, but
4 if they're ripe, we can do it on Monday's phone call.

5 I know one of the issues has to do with the exemplar
6 documents. Mr. Slater, is that dispute ripe for discussion on
7 Monday or were we going to wait until after the supplemental
8 productions and the conference at the end of July to address
9 that issue?

10 MR. SLATER: Your Honor, I think that there are a few
11 narrow issues that -- and maybe not so narrow -- that we could
12 probably address Monday. And what I would think is that if
13 everybody knows we're going to talk Monday, then it would be
14 incumbent on us and the involved defendants to have a serious
15 discussion over, you know, what they're willing to give, what
16 we really need, and then at least we can explain to you the
17 issues Monday, and we're hopeful for rulings, and, if not, at
18 least you can give us guidance so that we can go forward
19 knowledgably and try to finish resolving these issues.

20 THE COURT: Okay. Sounds good. Yes --

21 MR. GOLDBERG: Your Honor -- your Honor, this is Seth
22 Goldberg. If I can, we certainly were under the impression
23 that there was -- as you had said, Mylan and ZHP had agreed to
24 produce certain documents by July 6, and that there would be
25 issues, if any, to be resolved after. At least as to ZHP, I'm

1 not sure what issues would need to be resolved Monday. I'm
2 not certain there are issues that are teed up for Monday.

3 The parties are all involved in a meet-and-confer
4 process, each independently. And we're talking -- we're on
5 Wednesday afternoon, and if there are no issues that have been
6 identified yet, it seems -- I just don't understand why we --
7 what we need to jam in to get resolved for a call on Monday.
8 We're talking about two business days.

9 MR. SLATER: I'm happy to answer that. I'm not
10 saying there are not issues that could be discussed today.
11 What I'm saying is, in fairness to the Court and to everybody,
12 we have issues we're ready to talk about.

13 For example, and I'm not -- Mr. Stanoch is on and
14 could get into more detail on this, and as well as Layne
15 Hilton, but I can tell you, just preliminarily -- and they're
16 ready, they could rattle off issues.

17 Number one, Mr. Stanoch wrote a letter to
18 Mr. Goldberg, and the response was this letter is
19 inappropriate and we're not going to answer this. We're going
20 to decide what we're going to give you. That -- we have to
21 either know if we're going to get responses to those questions
22 or not, and if the answer is no, then there is no reason to
23 wait another month to get it addressed if we can get it
24 addressed Monday.

25 There is issues with exemplar documents with some of

1 the parties that we're still wrangling over. You know, one of
2 the issues is we led off -- put in our letter, and, again,
3 I'll hand off, if Mr. Goldberg wants us to give the issues
4 now, your Honor, we can do it, because I've got multiple
5 attorneys ready to give specifics, but we're running into a
6 stone wall on some things to the point where parties who are
7 getting out of the litigation under that protocol we set up
8 are giving us more information than what certain defendants
9 think they should have to give us that are defendants that are
10 not getting out under that protocol. So, I mean, we can do it
11 either way. I thought it made sense to try to give a few
12 extra days to maybe resolve some of the issues and narrow the
13 disputes, but we certainly want to get them resolved either
14 today or Monday. We don't want to wait another month.

15 MS. BAZAN: Your Honor, this is Rebecca Bazan for the
16 ZHP defendants. I just wanted to clarify one point.

17 The sales and pricing formation, the documents
18 produced in response to document request 107 and ZHP and
19 Mylan's supplemental production, that will be made on July 6.
20 That is separate from this exemplar conversation. And we
21 agree with your Honor that to the extent there are outstanding
22 issues related to sales and pricing after those productions
23 and after continued meet and confers, that those should be
24 resolved at the end of July, certainly not on Monday.

25 As to the letter that plaintiff sent to ZHP, we did

1 not say that we would not answer it. What we said was -- it's
2 a 12-page letter that has more than 130 detailed questions in
3 response to documents that we produced pursuant to one
4 document request. It is per se unreasonable, and it takes
5 time to parse through that, figure out which of those
6 questions might be appropriate to answer, and then consult
7 with our client to do that. It's not something that can
8 happen overnight. And we have said that we will work with
9 plaintiffs in good faith to help them understand fields in the
10 spreadsheet that ZHP and Solco produced that they don't
11 understand. We are working with our clients to get those
12 answers. But there are questions in that letter that are
13 completely inappropriate, for example, to Solco, who produced
14 thousands of pages in an electronic spreadsheet, sortable
15 forms, that included all of the necessary information --
16 customer date, quantity, price. They're asking, aside from
17 that spreadsheet, what other electronic data do you have? How
18 does Solco know who its customers are? How does it prepare
19 price quotes for those customers? That's not appropriate at
20 this stage in the game, and that's certainly not something
21 that is ready to be resolved on Monday.

22 MR. GOLDBERG: Your Honor, if I may --

23 THE COURT: Mr. Goldberg, what I was going to suggest
24 is let's circle back at the end of this conference call and
25 discuss if we're going to go ahead with the call on Monday,

1 and, if so, what issues. Some of the dust may clear,
2 depending upon what happens today.

3 I do think the priority is the search term issue.
4 We've got to get that resolved. We've got to bring that to a
5 head and conclusion, and we ought not be distracted by the
6 sales and pricing, which we'll get to. If we need more time,
7 we're going to use the time on Monday to finalize this search
8 term issue.

9 So let's circle back at the end of this call, and
10 then I have a feeling that we'll have a better plan after we
11 see what happens during this call about if and what we're
12 going to discuss on Monday.

13 So let's get to the main event. The main event is
14 this search term issue.

15 We received, and I'm very appreciative, tons of
16 correspondence, submissions by the parties. We've read them
17 all. We've digested them. We've done lots of preparation for
18 this phone call, realizing how important this issue is, to the
19 progress of the case, and getting things moving. If we look
20 at the issue from 10,000 feet, and correct me if I'm wrong, it
21 looks like plaintiffs and ZHP have reached some sort of
22 meeting of the minds about what's going to be done. It looks
23 like, and we'll discuss it, Mylan and plaintiffs have sort of
24 reached the same equilibrium. If that's true, then we have to
25 deal with Torrent, Hetero, Aurobindo, Teva, and whoever is

1 left.

2 So, can someone speak to, just generally from 10,000
3 feet, where this search term issue is?

4 UNIDENTIFIED SPEAKER: Mr. Parekh could address that,
5 your Honor. He's been --

6 (Request for speaker identification from the court
7 reporter.)

8 MR. SLATER: Adam Slater. I would be happy to repeat
9 it. It's the first time anyone ever asked me to talk again.

10 I would just like to hand off to Mr. Parekh, who, for
11 the plaintiffs, has been handling a lot of the negotiating and
12 is probably the perfect person for our side to give Judge
13 Schneider an overview of where we were, so I was just handing
14 off to Mr. Parekh. Sorry about that.

15 MR. PAREKH: Good afternoon, your Honor. Behram
16 Parekh on behalf of the plaintiff.

17 So where we are with ZHP is, as to ZHP's U.S., we
18 have an agreement as to the search terms that apply to them,
19 with modifications from December. And that was arrived at
20 through about two-plus weeks of very intensive discussions and
21 negotiations and lots of exchanges, data, running back and
22 forth.

23 ZHP has informed us that their Chinese custodians are
24 still in the process of being loaded into a document review
25 system and that they are unable at this time to do the same

1 kind of negotiations as to the Chinese custodians. The
2 Chinese custodian issue was delayed due to the COVID and the
3 shutdown of China during the earlier part of this year.
4 That's sort of where we stand with ZHP.

5 As to Mylan, we have agreed in principle to an
6 agreement for all custodians. The details are that what we
7 did was we separated out the API custodians from the finished
8 dose custodians and were able to agree to a narrower list for
9 the finished dose custodians and a much broader list for the
10 API custodians. We actually just did our final resolution
11 this morning, and we are now essentially set with those.

12 Mylan has not begun the process, is our
13 understanding, of loading these documents to their document
14 review platform, but apparently will be doing so at this point
15 going forward.

16 With both ZHP and Mylan, we have committed, if they
17 bring additional issues to us during the review process, we
18 are open to being reasonable and looking at them, but that our
19 position is that, you know, the Court has given all parties
20 many, many opportunities to do a finalization of discovery
21 issues related to search terms, and this continuous sort of
22 rebringing issues to the Court needs to stop.

23 THE COURT: I think it is critical -- first, I
24 commend the parties for working as hard as they did to reach
25 agreement. I wish they had done it earlier but there is no

1 use crying over spilled milk. What's done is done. But I
2 think it's critical that we document this and the agreement in
3 a Court order. I don't want to run into problems again in the
4 future.

5 Are you and ZHP and Mylan going to be in a position
6 in the reasonable near future to put your agreement down on
7 paper so the Court can incorporate it into a Court order? I'm
8 not going to stand in the way of an agreement reached by the
9 parties. I would prefer, of course, that it all be wrapped up
10 in a nice bow. But it's abundantly clear that ZHP is acting
11 in the utmost good faith, and it's apparent and plain that
12 there are substantial practical issues getting everything
13 resolved with China. We'll have to work through that, and I
14 understand that. But I would like to get this in an order
15 because if it's not in an order, we're going to be,
16 unfortunately, in the same position a couple of months down
17 the road.

18 So do you and these defendants -- are you working on
19 putting pen to paper so that the agreement can be incorporated
20 into an order?

21 MR. PAREKH: Your Honor, both as to ZHP and as to
22 Mylan, the agreement as to the actual terms and modifications
23 thereto are already in a spreadsheet form in Excel. That's
24 how we have really been working at it the entire time. And so
25 that can be relatively quickly turned into something that can

1 be attached to an order.

2 As to the remainder, I mean, our position is that the
3 motion should be denied and that, you know, we remain
4 committed to and open to individual requests for modification
5 as to both Mylan and ZHP going forward, separate and apart
6 from the Chinese defendants, but, as to the remainder, we
7 remain open to discussing issues with them, but that at this
8 point in time, you know, their motion should be denied.

9 THE COURT: What I'm saying is, if you don't put your
10 agreement in writing that is incorporated into a Court order,
11 it's a recipe for disaster, and we're going to be back in the
12 same position in a couple of months. I understand if the
13 order says we're making these modifications to Exhibit H, and
14 you could add boilerplate that says something to the effect
15 that plaintiffs will consider, in good faith, reasonable
16 requests to modify, blah, blah, blah, but we have to have this
17 in writing.

18 MR. SLATER: And we will do that, your Honor. We
19 will do the same thing. We'll put it into a spreadsheet, just
20 like the ZHP, and, you know, we would expect that after the
21 negotiations that we had that that should not be a problem
22 because we have, we believe, reached agreement on the
23 modifications we've agreed to.

24 THE COURT: Okay. So see if you can reach -- of
25 course, you're going to run this by ZHP and Mylan, and see if

1 you can reach an agreement on some sort of language, send it
2 to me, and I'll put it in an order so that there is no
3 misunderstanding about what has been agreed to. All right?
4 And, again, I commend the parties for working this out.

5 So, we'll get that consent order or some type of
6 agreement as to ZHP and Mylan.

7 Do I take it then that there are still issues to
8 address with the Torrent, Hetero, Aurobindo group, and then
9 perhaps Teva, and I don't know if there is anybody else?

10 MR. PAREKH: Yes, your Honor. This is Behram Parekh.
11 Yes. Yes, your Honor.

12 THE COURT: All right. So why don't we turn to those
13 parties then. And what I want to do is -- you've heard me say
14 this a million times. I'm not a very good poker player. I
15 want to put my initial feelings and thoughts out there, and
16 then we'll go through each of the individual parties and see
17 if we can resolve the issues. But let me just give you my
18 general impression about this whole thing.

19 One is I'm disappointed in myself because it's
20 incredible how long these issues have lingered. We did a lot
21 of work into the background of this. The ESI protocol was
22 signed in June, 2019. The first time the search term issue
23 was mentioned was in CMO Number 10 from July 1st, 2019. The
24 Court urged the parties to agree and work on the search terms.
25 In the Court's view, it took an inordinate amount of time for

1 the parties to finally agree on it. The agreement was
2 incorporated into the December 23rd order. It's on the record
3 that the defendants said they had no objections to the order,
4 except for the 31 terms that were so far -- that were referred
5 to in that order. And here we are in June 2020 arguing about
6 the issues that one year ago the parties were supposed to
7 start working out. I just think that's unacceptable. And I'm
8 going to take responsibility for that because maybe -- I think
9 I gave the parties too much leeway and too much time, hoping
10 that they would resolve this issue, but it's just got to be
11 resolved. It's gone on for a year. And, in the Court's view,
12 anyway, it shouldn't take that long.

13 The second general comment is I'm delighted that the
14 parties are meeting and conferring on these issues, but it
15 shouldn't take the Court ordering briefs to be filed and a
16 conference to be scheduled for the parties to wake up and pay
17 attention to this issue. I'm sure there is going to be
18 disputes because we received letters from the plaintiffs that,
19 only a day or two or three ago, they first heard from the
20 defendants. Completely unacceptable. Completely unacceptable
21 in the context of this type of litigation.

22 The third general comment is when the Court entered
23 the December 23rd order with Exhibit H, if it had any inkling
24 that a party was going to argue that they had the right to do
25 a do-over, in the Court's view, I wouldn't have signed that

1 order.

2 What the Court envisioned is that maybe there's
3 tweaks. Unforeseen issues come up. The issue, I think I saw
4 in the papers, about the footer. Obviously, that's an issue
5 that has to be addressed. It's a clear problem. It's a minor
6 problem. But in no way, shape, or form did the Court envision
7 that we spent -- or you spent four or five months negotiating
8 search terms, and then the defendants can come back and say,
9 well, we have a do-over because the work we should have done
10 in the fall, we didn't start until after the new year, and we
11 found problems and we have to have a do-over. I'm just not
12 sympathetic to that argument, and I'm sorry, and I know there
13 is different characterizations about what the defendants are
14 asking for, but even in the defendants' own letter, they
15 acknowledge that they are asking for significant revisions.

16 I don't accept the notion -- I'm glad Mylan worked
17 out this issue, but I don't accept the notion that the
18 defendants couldn't start doing hit lists or hit searches
19 until every last custodian was identified. Completely
20 unacceptable. Certainly, there is a core group of custodians
21 that everybody agrees has to be searched, and there is
22 absolutely no reason why the defendants couldn't have done a
23 search of those custodians before the Court signed an order
24 approving the final list.

25 And then I've read everything that has come across

1 the Court's desk, and it's beyond me, I just can't
2 contemplate, I just don't understand why the issues that are
3 being raised now weren't raised in the fall. I just really
4 find that troubling. And with the level of sophistication of
5 the counsel in this case, and the complexity of this
6 litigation, how the Court could give the parties -- let's see,
7 from July, August, September, October, November -- six months
8 to negotiate the search terms, it finally enters an order, and
9 then the defendants say, well, we did a hit count and we have
10 to revise the search terms because the six months we spent
11 looking at this issue was a waste of time, I'm just having
12 trouble grasping that.

13 So it's fantastic that Mylan and ZHP have worked out
14 this, especially Mylan, because they apparently took the lead,
15 but we'll deal with the other parties in the case, and you
16 know where the Court is coming from when it approaches this
17 issue. You spent so much time in the fall working on the
18 search term issue, that had to have some meaning. And the
19 Court just is not sympathetic to the argument that after the
20 Court order is entered, we can come back and ask for a
21 do-over.

22 And the last comment I'm going to make before we
23 approach the Hetero, Eurobindo, Torrent parties is you've
24 heard me say this a thousand times in this case. The train
25 left the station, and the Court doesn't have a whole lot of

1 sympathy for parties that were on notice of the case, had an
2 opportunity to participate in the search term negotiations,
3 they stood on the sidelines, and that's their right. They had
4 every right in the world to do that. But the Court is not
5 sympathetic to parties that were on notice of what was going
6 on, and then they come in late and say, well, we have to
7 revise what was going on because we just got into the case.

8 So, counsel, those are my blunt general thoughts on
9 this. But let's go to each party.

10 The first party I have on my list is Torrent, and
11 this is the party that plaintiffs say they heard from them for
12 the first time on June 9th, which I don't understand that, if
13 that's true. Plaintiffs, what do you want to do about
14 Torrent?

15 MR. PAREKH: Your Honor, I mean, honestly, you know,
16 we proposed some modifications back to them on Monday, based
17 upon the information we got on June 9th. And, as we've said
18 before, I mean, we're reasonable. We'll make some
19 modifications. But our view is they should be running search
20 terms and doing reviews and everything else based upon the
21 original search terms, and if we agree to some modifications,
22 great, but if not, they shouldn't have an opportunity to come
23 back to the Court.

24 THE COURT: They've come back to the Court --

25 MR. PAREKH: After today. I'm sorry. After today.

1 THE COURT: Torrent, who is going to speak for them?

2 MS. BRANCATO: Thank you, your Honor.

3 (Request for clarification from the court reporter.)

4 MS. BRANCATO: Yes. Thank you. This is Alexia
5 Brancato for Torrent. Last name is B-R-A-N-C-A-T-O.

6 Your Honor, Torrent appreciates all of the points
7 that you've made so far, and, just to be clear, for ourselves,
8 we are only asking for particularized nuance changes to the
9 search terms. We're not asking for a do-over or anything like
10 that. And it's only search terms that are problematic when
11 applied specifically to the Torrent collection so far.

12 And, like Behram said, we have had correspondence
13 since June 9th, including a meet and confer, and further
14 e-mail correspondence, and are engaging in the iterative
15 process of negotiations and whittling down the issues. I
16 fully expect that we will be able to reach an agreement with
17 plaintiffs on the few outstanding search terms we have left,
18 and that we won't need to come back to your Honor for further
19 relief on this.

20 I appreciate plaintiffs' position and their
21 willingness to engage with us in negotiations about some of
22 the problematic terms that we're seeing, and we're certainly
23 willing to continue that so that we don't actually have a
24 dispute here.

25 THE COURT: Can you explain to the Court, counsel,

1 why it was just within the last week or so that serious
2 discussions have taken place regarding the search term issue?
3 With due respect, your firm has been in this case -- we
4 checked the docket -- since July 2019. So why did it take
5 until a week or so ago for the parties finally to roll up
6 their sleeves to get to the bottom of this issue? Where was
7 Torrent when Exhibit H was being negotiated, when we had the
8 December conference, and counsel stood up and said we don't
9 have any objections? Why wasn't work done at that time that,
10 apparently, is being done now to understand what it is that
11 plaintiffs are asking for and what type of problems might
12 arise by using those search terms? Is there a good answer to
13 that?

14 MS. BRANCATO: Your Honor, immediately after the
15 December order came down with the final search terms, we
16 engaged our client in retaining and collecting documents as
17 soon as possible. Unfortunately, given the realities of
18 having an international client with no U.S.-based, in-house
19 counsel, in addition to the coronavirus shutdown in March, we
20 were unable to begin loading documents until April. And then
21 as soon as the documents were loaded, we ran the search terms
22 as quickly as possible, and as soon as we received search term
23 results on, I believe, June 8th, we sent them immediately to
24 plaintiffs on June 9th.

25 THE COURT: Well, you're not alone in this. I guess

1 I'm having trouble grasping why the parties waited until after
2 the order was entered to take a first look at whether the
3 search terms were acceptable or not. Is that the way things
4 are done in practice? I don't think so.

5 Isn't a more prudent way to proceed that during
6 negotiations, parties run samples, tests, what have you, and
7 that is taken into account when you approach the Court and
8 say, here are the search terms we agreed to, and we don't have
9 any objections to them? Am I wrong about that?

10 MS. BRANCATO: Sorry, your Honor.

11 In my experience, what has happened, for example, in
12 the generic MDL, for which we represent another defendant,
13 custodians were negotiated first in that MDL and then several
14 months later, search terms were negotiated, after custodians
15 were full and final. And so at that point, the parties were
16 able to engage in this iterative process with each other
17 because the custodians were done and set, and we had a final
18 universe of documents we could run the search terms on. And
19 so in this case, when we did everything simultaneously, we
20 weren't able to go through that iterative process of running
21 the search terms and checking them before the final December
22 order was put into place.

23 THE COURT: Well, I hear your arguments, counsel, and
24 with due respect, Mylan made the same argument, which the
25 Court flatly rejects, that -- Mylan argued that it was not

1 until the custodians were finally wrapped up in a bow that
2 they could do some sort of sampling or test runs. That's what
3 they argued. Right? That's unacceptable. I mean, I cannot
4 accept that because it's implausible that the defendants
5 didn't know of a core group of custodians which absolutely,
6 positively was going to be included in any court-approved
7 list. So, hypothetically, if there was a list of 30
8 custodians, at least 20 or 25 of those are undisputed, and we
9 are arguing about the last five.

10 So, I don't want to dwell on this because there's
11 other parties we have to deal with, but, certainly, Torrent
12 knew that there was a core group of custodians, just like
13 Mylan knew there was a core group of custodians that were
14 going to be included on any list, and the search could have
15 been done on them.

16 So anyway, counsel, here's what the Court's
17 inclination is. We're going to continue this conference call
18 and this argument on Monday. Whatever agreement you reach by
19 Monday is fine with the Court. If not, I'm just going to
20 probably go with Appendix H, and the parties will have to bear
21 the consequences.

22 I appreciate plaintiff's good faith, and I think it's
23 perfectly appropriate to tweak the list based on the
24 information you provided them. And if you and plaintiffs can
25 agree by Monday on those tweaks, that's fine with the Court.

1 But if you can't agree, we're going to go with Exhibit H.

2 Okay?

3 So Torrent was the easy one.

4 Then we have Hetero. So the Court's notes as to
5 Hetero indicate that they were served in January 2020. I'm
6 talking about the foreign entities. But Hetero USA was in the
7 case from the very beginning. It's implausible to this Court,
8 unless counsel represents the opposite, that Hetero USA did
9 not inform Hetero Labs Limited and Hetero Drugs Limited what
10 was going on in this country, so the Court infers that the
11 foreign entities knew exactly what was going on, and they
12 decided that they wanted to be served pursuant to The Hague,
13 which was their absolute right. And then it appears that
14 Hetero, like some of the others, waited to finalize, waited
15 for the final custodian list before they agreed to do any type
16 of testing or sampling, and you've heard what the Court had to
17 say about that.

18 So, plaintiffs, where do you stand with Hetero?

19 MR. PAREKH: Your Honor, we ultimately need to
20 separate out, and, unfortunately, the briefly doesn't do so
21 clearly, Hetero USA versus Hetero -- the two Indian entities.

22 As to Hetero USA, we have yet to receive any
23 communication at all regarding the search terms, and so our
24 view is, as to Hetero USA, the Court order should be that the
25 search terms entered in December apply to all custodians

1 agreed to as to Hetero USA.

2 As to the two Indian entities, they had consistently
3 maintained the position to us that until they agree to
4 custodians, we can't even begin to discuss search terms,
5 which, honestly, I think is ridiculous. I apologize for using
6 that term. But, I mean, our position is that, look, the
7 boat's left the dock.

8 (Request for clarification from the court reporter.)

9 MR. PAREKH: As to the Hetero Indian entities, their
10 position has been that, you know, they are not going to be
11 able to negotiate search terms until we have a final
12 resolution on custodians, which hasn't happened yet. We don't
13 believe that that is a tenable position, and that the Court --
14 what I said, I think, I believe that the boat's left the dock
15 and the Court should order the December search terms be
16 applied to them.

17 THE COURT: Okay. Let's -- is counsel on the phone
18 for Hetero Labs and Hetero Drugs, someone from Hill Wallack?

19 MR. WRIGHT: Yes, your Honor. This is Grant Wright
20 from Hill Wallack, and my co-counsel, Nakul Shah, is also on
21 the line with us here.

22 And it's been our position since we began contacts
23 with plaintiffs with regard to core discovery back -- and ESI
24 terms back in April, that we're not looking for wholesale
25 changes to Exhibit H. What we're looking for and all that

1 we're asking the Court for is the opportunity to continue
2 conversations and meet and confers with plaintiffs in the
3 event that there are certain terms in the search terms such
4 as, for example, we are an Indian entity, and the name "Patel"
5 is in the search terms, so that's going to turn up more
6 documents than I think either party wants to go through. And
7 we just want the opportunity to revise -- make minor revisions
8 to the search terms when or once the custodians have been
9 confirmed. And we began back in April with our discussions
10 with plaintiffs' counsel with regard to custodians and core
11 document presentations, and we have been meeting the deadlines
12 that the parties have agreed to.

13 It's our position that we should be able to continue
14 that process of meeting and conferring with plaintiffs so that
15 we can have the ESI productions go as smoothly as possible,
16 and we can be on par with the other parties in this
17 litigation.

18 THE COURT: Well, counsel, you heard what the Court
19 had to say, and I'm not going to repeat myself. You have
20 until Monday to work this out. If you can reach an agreement
21 by Monday with plaintiff on minor revision tweaks, that's
22 perfectly fine with the Court. If no agreement is reached,
23 the order is going to say Exhibit H applies, and it's not
24 going to be changed.

25 It's completely unacceptable that Hetero takes the

1 position that it can sit and wait to do any type of meaningful
2 search concerning Court-ordered search terms that applied to
3 it in December 2019 until some unknown time in the future when
4 we finally agree on the final custodian list.

5 I have already said what the Court believes, and if
6 I'm wrong, I'd like to hear from you. Maybe, maybe, there is
7 a handful of people that you're going to argue about whether
8 they belong on the custodian list or not. But it's simply
9 implausible that you don't know the core people yet who are
10 going to be on this custodian list. Those are the people who
11 test runs and samples should have been done already. We're
12 not going to wait months and months and months for this to go
13 on.

14 Your client has to start its document production on
15 July 15th, and that date is not going to be extended. And
16 we're not extending the search term issue until some unknown
17 time in the future because we started this discussion a year
18 ago, in 2019. July 1, 2019, which is just about a year ago
19 was when the Court's first order was entered saying the
20 parties have to meet and confer about search terms.

21 So, whatever you can accomplish on behalf of Hetero
22 between now and Monday, God bless you. I hope you'll work it
23 out. Plaintiff is, from what I've seen, acting in utterly
24 good faith, and they'll work with you. But come Monday, we're
25 wrapping this up in a bow and there's going to be no more

1 changes.

2 Who is on the phone for Hetero USA?

3 (No response.)

4 THE COURT: Is there any counsel from -- I think the
5 law firm is Martin Kundla?

6 (No response.)

7 THE COURT: Okay.

8 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
9 believe Hetero --

10 MS. POLETTO: I was on mute.

11 MR. GOLDBERG: Oh, there you go.

12 MS. POLETTO: Yeah, I'm sorry. Can you hear me now,
13 your Honor?

14 THE COURT: Yes. Thank you, counsel, for appearing.
15 Are you from Martin Kundla?

16 MS. POLETTO: I'm from Hardin Kundla, yes, I am.

17 And, thankfully, I'm on the phone because, candidly, this
18 comes as an utter surprise to me that the plaintiffs would be
19 raising any issues as to Hetero USA.

20 As your Honor knows and recalls, Hetero USA is the
21 FDA agent only, and it's -- and we've -- actually, in fact, I
22 sent at least two letters to Layne Hilton stating our
23 position, as all of these things have been going on, to the
24 effect that, as the U.S. agent, we are not even subject to the
25 requests for production at this point in time, nor should we

1 be subject to the ESI discovery.

2 Your Honor had even stated in one conference that the
3 requests for production vis-a-vis U.S. agents would not be as
4 extensive as they would be for the manufacturer defendants,
5 and it was fully our understanding that the negotiations of
6 the ESI terms that was going on back last fall was relating to
7 the manufacturers. So this is catching me completely at a
8 loss.

9 We actually did sit down and negotiate with Layne,
10 the custodian for Hetero USA, just to be ahead of the game,
11 but as we told her the last two communications, we're sitting
12 here and waiting till the time when the RSPs prepared and
13 agreed to were ordered by the Court relating to our client.
14 And as your Honor recalls and knows, we spent a lot of time
15 and money doing productions that we otherwise wouldn't have
16 had to have done but for the absence of the India companies in
17 the case.

18 (Request for speaker identification from the court
19 reporter.)

20 MS. POLETTA: Janet Poletto, Hardin, Kundla, McKeon &
21 Poletto. I guess that got lost in my mute. Sorry.

22 THE COURT: Plaintiff, do you want to speak to this?

23 MR. PAREKH: Your Honor, this is Behram Parekh. I
24 will let Ms. Hilton address this. She was addressed directly
25 by name.

1 MS. HILTON: Good afternoon, Your Honor. Layne
2 Hilton for plaintiffs.

3 Ms. Poletto is correct that she did recently send me
4 a letter related to the issue of quote, unquote,
5 prioritization of production which, again, as this Court is
6 well aware, I wrote a letter awhile ago about the
7 prioritization of certain document productions. But, you
8 know, I think our position, at least as to the -- the sort of
9 framework of the search terms, was that if they had agreed to
10 custodians, you know, obviously, there were going to be some
11 search terms applied to those custodians, and so, you know,
12 our only point there to mention them was to say that because
13 we agreed to custodians, you know, back in December, and at no
14 point did they ever even mention to us that there would be any
15 issues with the search terms that we selected to apply to
16 those custodians, we're just trying to, you know, ensure that
17 they're not going to at some later date seek a wholesale
18 revision because, of course, as this Court is aware, we were
19 negotiating these two pieces in concert with one another. So,
20 you know, to the extent that they had agreed to custodians, it
21 sort of defies logic that there wouldn't have also been
22 agreement to the search terms for which -- you know, that
23 would be applied to those custodians.

24 THE COURT: I guess, frankly, I'm a little confused
25 because Hetero USA has raised a position that they're not

1 subject to the order requiring the production of documents, I
2 suppose because they're not an API or finished dose
3 manufacturer; they're an FDA agent. So do you acknowledge
4 that or do you concede that?

5 MS. HILTON: We do acknowledge that, your Honor.
6 But, you know, I think this is, you know -- I think the
7 difficulty here is that because the Hetero entities are now
8 being represented by three separate sets of lawyers, it's --
9 you know, it's making these sorts of negotiations a little bit
10 more protracted, in part because when you look at the sort of
11 comparable entity, you know, ZHP and Solco, they're
12 represented by one lawyer, so it's much easier to sort of
13 understand, you know, where they're coming from, versus, you
14 know, these different -- three different disparate sets of
15 lawyers.

16 You know, we promulgated a list of requests for
17 production, which do include documents, you know, that would
18 be in the possession, custody, and control of Hetero USA.
19 Those are the regulatory documents. If they are the U.S.
20 regulatory agents -- I guess, you know, our position was that
21 if Hetero Labs Limited was going to be responding to those
22 requests, then necessarily, Hetero USA would be producing
23 documents because, you know, they are within the possession,
24 custody, and control of Hetero Labs Limited and Hetero Drugs.
25 But, you know, that sort of is some background to explain the

1 sort of difficult posture with these entities.

2 THE COURT: Counsel, I'm a little confused. One, I
3 only -- I have a note that one law firm represents Hetero USA
4 and another law firm represents Hetero Labs and Hetero Drugs.
5 Who is the third law firm?

6 MS. HILTON: The third law firm, as your Honor may
7 recall, is Camber, who refers to themselves as a distributor,
8 but who is a subsidiary corporation of Hetero Drugs and
9 distributes Hetero Drugs and Hetero Labs products. So that's
10 the third -- right? So, the sort of analogue is that, you
11 know, ZHP, Prinston, Solco, we have the same sort of structure
12 within Hetero Drugs, except it's Hetero Drugs, Hetero Labs,
13 Hetero USA, and Camber. And all three entities function
14 together to distribute Hetero Drugs and Hetero Labs finished
15 dose product in the United States. But they're in this case
16 represented by three sets of attorneys.

17 THE COURT: Okay. We're not dealing with Camber now
18 so I'm putting them aside.

19 We know what the Court said about Hetero Labs, Hetero
20 Drugs. That issue is coming to a head on Monday.

21 I still don't understand what to do with Hetero USA.

22 MS. POLETTA: Your Honor, may -- go ahead.

23 THE COURT: No, I had nothing to say.

24 MS. POLETTA: It's Janet Poletto again.

25 You know, again, I'm at a loss. I am happy to

1 provide your Honor with the letters sent to Ms. Hilton that
2 made our position very clear throughout. And it's completely
3 surprising to me that somehow I'm being dragged into this
4 argument right now and potentially, you know, being precluded
5 from ever negotiating different search terms when my client is
6 not a manufacturer, either API or finished dose, and those are
7 the API and finished dose manufacturer search terms.

8 I'm happy to continue to talk to the plaintiffs as to
9 how to proceed from here, but not once did I have any notice
10 that they were going to be raising Hetero USA in these
11 discussions today, and, as I said, it's fortuitous that I
12 actually decided to join onto this call.

13 THE COURT: Well --

14 (Simultaneous Crosstalk)

15 THE COURT: I don't want to get bogged down on this.
16 We've got more to discuss.

17 Can plaintiffs and Hetero USA discuss this issue
18 tomorrow and Friday, and we'll see if we can reach some type
19 of resolution of this issue on Monday? I'm a little confused
20 about whether Hetero is going to produce documents or not.
21 And Hetero USA was under the impression that they weren't
22 subject to the order. Plaintiff may be under a different
23 impression. So why don't you talk about this and see if you
24 could reach some type of understanding, and we'll talk about
25 this on Monday. Is that okay with you, plaintiffs?

1 MR. PAREKH: This is Behram Parekh, your Honor.

2 That's totally fine with us.

3 And just so it's clear where we're coming from, is
4 Hetero USA agreed to custodians as part of the production
5 process, and it was just, you know, our view that once you
6 agree to the custodians, obviously, you're going to be subject
7 to the search terms applied to custodians. So I think that's
8 where our position comes from.

9 THE COURT: Okay. And if I look at the December
10 order -- I don't have it in front of me, counsel. Is there an
11 exhibit with agreed upon lists of Hetero USA custodians?

12 MS. HILTON: Yes, your Honor, there is. And if I'm
13 not mistaken, I believe your Honor's December order I think
14 ordered that the search terms also appended as an exhibit to
15 that order were to be applied to the custodians that were
16 appended as a different exhibit.

17 (Request for speaker identification from the court
18 reporter.)

19 MS. HILTON: I'm sorry. This is Layne Hilton on
20 behalf of plaintiffs.

21 And just to sort of correct, we weren't demanding
22 that Ms. Poletto produce documents, but, rather, you know, I
23 think we were trying to understand, and it's good that it's
24 come to a head, you know, whether they were going to use the
25 search terms as ordered which were, you know, ordered to be

1 applied to the custodians appended to the same exhibit. I
2 know I was demanding that Ms. Poletto or her client produce
3 every single document that was a hit to those search terms,
4 but I think since we hadn't heard anything on the point,
5 that's, you know, why Mr. Parekh mentioned it. So, you know,
6 I understand that Ms. Poletto sent letters, and I'm, you know,
7 sorry that she was caught unawares, but, you know, our
8 confusion was because, as ordered in the December order, it
9 was -- it was for the search terms to be applied to those
10 custodians.

11 THE COURT: Well, it looks like there might just
12 be -- this might be a situation where there is a good-faith
13 misunderstanding, which happens, so maybe can you talk with
14 Hetero USA over the next day or two, and we'll come to a
15 resolution somehow on Monday. Okay?

16 One, if they're going to produce documents, which I
17 hope the answer is yes; and, two, if they produce documents,
18 what search terms are going to be used. Okay?

19 MS. POLETTA: I'm happy to discuss it -- this is
20 Janet Poletto again, your Honor. I'm happy to discuss it with
21 the plaintiffs over the next couple of days, but I tried to
22 make the record clear with copies of the letters I sent.

23 THE COURT: Okay. Thank you, counsel. Much
24 appreciated.

25 Okay. So that takes care of Hetero, Aurobindo, and

1 Torrent. Is the only party that's left Teva?

2 MR. PAREKH: And Aurobindo, your Honor.

3 THE COURT: Okay. Aurobindo. That's right. I got
4 ahead of myself. Aurobindo. Let me look at my notes.

5 Again, we have a USA entity and a foreign entity.

6 Where do we stand, plaintiff, with regard to Aurobindo?

7 MR. PAREKH: As with Aurobindo, the U.S. entity, they
8 had confirmed they were running the original list from
9 December against the U.S. custodians. It appears that their
10 position as to the Indian entities is the same as Hetero's,
11 and our position is the same as well.

12 THE COURT: Okay. Let's deal with the U.S. entity
13 first. Aurobindo Pharma USA LLC. Is their counsel on the
14 phone?

15 MS. HEINZ: Yes. Hi, your Honor. This is Jessica
16 Heinz.

17 THE COURT: Okay. Ms. Heinz, where do things stand
18 with regard to search terms you are going to use?

19 MS. HEINZ: We have run -- we have collected all of
20 our custodial files. They have been uploaded into our vendors
21 system. We started reviewing. We ran the original search
22 terms. We are now considering whether there is any
23 problematic terms and are hoping to continue our discussions
24 with the plaintiffs that I think have been pretty helpful over
25 the past couple weeks. We are not seeking a wholesale

1 revision of the search terms. We are prepared to go forward
2 with the original set, but would just like to continue
3 engaging in meet and confers, if necessary.

4 THE COURT: You have until Monday. Okay?

5 MS. HEINZ: Thank you, your Honor.

6 THE COURT: Hopefully, you'll reach a meeting of the
7 minds with plaintiffs, and we can put this to bed, but it's
8 not going to extend past Monday.

9 Is anyone on the phone for Aurobindo Pharma LLC,
10 Aurobindo Pharma Limited?

11 MS. HEINZ: Hi, your Honor. This is Jessica Heinz.
12 So, our --

13 THE COURT: Wait.

14 MS. HEINZ: Sorry.

15 THE COURT: What's the situation with regard to
16 Aurobindo foreign entities?

17 MS. HEINZ: So Aurolife is actually a U.S. entity.
18 The only foreign entity is Aurobindo Pharma Limited.

19 THE COURT: Okay. Sorry about that.

20 MS. HEINZ: No problem. So they -- we have collected
21 core discovery documents. We're in the process of reviewing
22 those. Our first production deadline is June 30th.

23 I have been -- I initially reached out to plaintiffs'
24 counsel to start talking about custodians when we -- when they
25 entered their appearance in February. I was told back then

1 that they would like to see certain core discovery documents
2 in order to make a determination of who they would agree to
3 for custodians. But I am prepared to, you know, run the
4 search terms against the documents that I have collected so
5 far and try to engage in some meet-and-confer discussions with
6 plaintiffs if they're agreeable going forward.

7 THE COURT: Well, you have until Monday.

8 MS. HEINZ: Thank you, your Honor.

9 THE COURT: Thank you. Thank you, Ms. Heinz.

10 Okay. Is the only entity left Teva? Plaintiff,
11 where do things stand with Teva?

12 MR. PAREKH: So, with Teva or Teva -- I honestly
13 don't know which --

14 THE COURT: Teva or Teva. I'm sorry if I
15 mispronounce it.

16 MS. LOCKARD: It's Teva. Teva are sports sandals.

17 (Request for speaker identification from the court
18 reporter.)

19 MS. LOCKARD: It was Victoria Lockard, Ms. Farrell.
20 I hope you can hear me okay. I know the last time we had a
21 little bit of an issue.

22 THE COURT: Ms. Lockard, are those those expensive
23 sandals that we all can't afford?

24 MS. LOCKARD: Yes, but they're very handy, if you do
25 any hiking or, you know, water kayaking.

1 (Laughter)

2 THE COURT: Where do things stand?

3 MR. PAREKH: Your Honor, this is Behram Parekh.

4 With Teva, they sent us some hit counts back on --

5 (Request for clarification from the court reporter.)

6 MR. PAREKH: Okay. So we had a discussion with Teva
7 on June 9th, after they sent us some initial hit counts on
8 June 8th. We asked questions. We, you know, talked and were
9 going to talk further. They were going to send us more
10 information regarding some -- the hit counts and what their
11 actual proposal was because they had said that they, you know,
12 were backing off of the Mylan proposal.

13 We just heard, you know, we got an e-mail today
14 asking to have a meet and confer on Friday or Monday. You
15 know, our -- I think our position would be the same, is
16 whatever we can agree to by Monday, that should be it.

17 MS. LOCKARD: And, your Honor, this is Victoria
18 Lockard.

19 So, you know, I do agree that, you know, I think
20 we're optimistic that we can probably reach some modified
21 version of Exhibit H, and we're certainly prepared to produce
22 documents starting July 15th, particularly with the priority
23 documents, priority that are in our possession.

24 But just in terms of making sure we establish a
25 record of good faith, you know, and I believe this is set

1 forth in our papers, but once the order was entered on
2 December 23rd, we immediately connected with our vendor and
3 had the initial set of 16 custodians loaded in January. We
4 ran those searches, and then in February, we had our first
5 meet and confer with plaintiffs in February. It wasn't in
6 June. It was actually in February. And we talked about some
7 modifications, including the footer language, which we then
8 reran, and we were still essentially trawling about 40 percent
9 of the custodial e-mail file for those custodians.

10 So we then tried to undertake some additional rounds
11 of potential revisions to propose to plaintiffs. We did six
12 rounds of different versions that we felt were reasonable
13 modifications, not wholesale changes, and along that time in
14 March, we became aware of Mylan's proposal, which we then
15 adopted that, ran that to test against our system. This
16 brought us into essentially at the point in time when the
17 world was upended by the pandemic in the end of March and
18 April.

19 You may recall the defendants did bring up the search
20 terms as being an issue in April at the conference. But
21 during that time, we were working diligently with our vendor
22 to address the analytics and to propose some reasonable
23 modifications.

24 We -- at our last meet and confer last week, we did
25 provide some hit count data. I thought we had a productive

1 call with Mr. Parekh. He did agree to some additional
2 modifications, which we have rerun, as well as there were
3 three items that we discussed specifically that he would
4 consider if we proposed some reasonable framework for them.
5 And they were proximity limiters, between the words, some
6 exclusionary language related to other drugs outside of
7 valsartan, and then he suggested we talk to the other
8 defendants because he was making progress with Mylan,
9 primarily, and ZHP, and suggested that there may be some of
10 those modifications that we could adopt.

11 We then had some discussions with other defendants.
12 We have now been running new searches with our vendor to try
13 to come up with some reasonable proximity limiters and
14 exclusionary language and to adopt some of these other
15 provisions that are -- have a more global effect, and we have
16 that data ready to have a discussion with plaintiffs on
17 Friday, which we have -- was proposed as Mr. Parekh just
18 suggested.

19 So I do think that, you know, if we are given the
20 opportunity, I think we will be able to reach some sort of
21 agreement by next week, and we can, you know, be prepared to
22 move forward on July 15th.

23 THE COURT: Great. You have until Monday.

24 MS. LOCKARD: Thank you.

25 THE COURT: Thank you, Ms. Lockard.

1 So what I'm sensing is no later than Monday we will
2 have completely and totally resolved all search term disputes
3 to be incorporated into a Court order. That's a good thing.
4 So we could finally put that behind us.

5 I know next Wednesday, at least in the morning, our
6 agenda is mainly going to be taken up with the macro discovery
7 issues. I would like to -- maybe nothing will be resolved on
8 the pricing and sales documents issues on Monday, but I do
9 want to talk about that on Monday, because if there is an
10 issue we can address on Monday that will help advance the
11 ball, I don't see any reason why we have to wait till the end
12 of July to address it. If the issue is premature and the
13 defendants don't have an adequate time to respond or get their
14 ducks in order, we won't decide the issue, but let's at least
15 discuss what the issues and disputes are and, like I said, if
16 there's a way we can advance the ball and not have to wait a
17 month, I think it makes sense to do it.

18 So --

19 MS. LOCKARD: Your Honor, this is -- go ahead.

20 MR. GOLDBERG: Your Honor --

21 MS. LOCKARD: Go ahead.

22 THE COURT: Go ahead.

23 MR. GOLDBERG: Go ahead.

24 Your Honor, this is Seth Goldberg. I just wanted to
25 clarify something on the ESI search terms, because the last

1 thing you said isn't, I think, consistent with where we are
2 with plaintiffs, the ZHP parties. Your Honor said that an
3 order -- an order would be entered on Monday --

4 THE COURT: Right.

5 MR. GOLDBERG: -- that reflected that all disputes as
6 to ESI search terms had been resolved.

7 THE COURT: I know you still have the United States
8 to deal with. I know. I'm sorry. Go ahead. I understand.

9 MR. GOLDBERG: Right. And I think, just generally --
10 you know, I think, just generally, as to ZHP, and I'm not sure
11 about Mylan, but the agreement is that there will be -- it's
12 really an agreement to continue to refine and to continue to
13 negotiate -- on all of it, including the U.S. So, you know, I
14 don't want to over -- I just didn't want there to be an
15 overstatement on the record about what the agreement
16 on Monday -- or what the order on Monday will say.

17 THE COURT: Okay. We'll discuss it. But I guess --
18 that's fine. I think it makes sense to talk about it, refine
19 it, where necessary.

20 But the general sort of overview, sort of the tent
21 that that falls in is, one, the deadlines aren't changing;
22 and, two, the Court is not prepared, absent completely
23 unforeseeable circumstances, to make substantial revisions to
24 what it ordered. I understand tweaks and minor revisions and
25 unanticipated things, but at least when we started these

1 objections, plaintiffs were arguing that there were wholesale
2 revisions and rewriting everything. That doesn't appear to be
3 the case now. I anticipate that there will be tweaks along
4 the way, but I don't anticipate a "wholesale revision."

5 MR. GOLDBERG: Understood.

6 THE COURT: Mainly for the reason that all this
7 should have been done in the fall. You heard what I had to
8 say about that, and I didn't chime in when Teva was talking,
9 but I just don't understand why everybody waited until January
10 to start doing some type of verification of the search terms.
11 Otherwise, the five months you spent in the fall was a waste
12 of time. And I learned a lesson from that, too, so it won't
13 happen again.

14 Anyway, I understand what you're saying,
15 Mr. Goldberg, and your point is well taken. It's understood.
16 We understand that there is going to be tweaks along the way,
17 and ZHP China still has to be addressed.

18 So we'll go ahead on Monday. I have my notes of all
19 the entities that have open issues on these search terms. I
20 hope -- I'll be delighted if it's all worked out. That's
21 great. If not, we're just going to go with what we have
22 because enough time has passed where this issue should have
23 been resolved. We'll talk about the sales and pricing issues,
24 and if there is something that could be resolved that will
25 help advance the ball Monday, we'll talk about it, instead of

1 wasting another month until we roll up our sleeves at the end
2 of July to really hammer down. But this search term issue is
3 probably more important than that, so it deserves a priority.

4 And Wednesday we have the macro issue, which is
5 probably more important than the financial and sales
6 documents, which is important, but I think in terms of how the
7 case is going, we can put that a little behind.

8 So for the good of the order, are there any other
9 issues anybody wants to raise and address?

10 MS. WHITELEY: Yes, your Honor. This is Conlee
11 Whiteley. Can you hear me?

12 THE COURT: Yes.

13 MS. WHITELEY: Okay. Thank you.

14 We have received the macro discovery brief yesterday
15 and last evening, and there is some interrelation between what
16 is being raised in those briefs and some of the items that we
17 were going to discuss in terms of the exemplars and the sales
18 and pricing data.

19 A bit of background is that part of the reason we
20 asked for the exemplars in the first part of this year was to
21 try to narrow the issues on the macro briefing. And now that
22 we have received the brief and see the positions, some of
23 which we are just learning for the first time because they did
24 not come up in meet and confers, we are scheduled to submit
25 our reply brief on Monday, the 22nd, and I believe that we

1 need a little bit more time to adequately reply to those
2 briefs, and, also, there is a possibility that we could narrow
3 the issues further through a meet and confer. And the
4 plaintiffs suggest that if the Court could indulge us to
5 extend the date for the hearing on those issues to the week of
6 June 29th.

7 THE COURT: June 29th? Oh --

8 MS. WHITELEY: Some date that is convenient to the
9 Court during the week of June 29th.

10 THE COURT: If the defendants are agreeable, I'm fine
11 with that.

12 MR. GEOPPINGER: Your Honor, Jeff Geoppinger -- and
13 I'll let Sarah jump in -- but Jeff Geoppinger for the
14 wholesalers, your Honor.

15 With respect to the extension, I understand the
16 plaintiffs are asking to have an extension until June 26 to
17 file their response, which is, of course, not a problem.

18 With respect to -- obviously, that's not -- that's
19 going to prohibit us from addressing these issues on the 24th.
20 And if the Court is -- will accommodate a hearing whenever
21 that is after they file their response, you know, that's the
22 Court's determination and we'll do that.

23 I do want to point out though that there is a bunch
24 of stuff in the submission that was made for this hearing --
25 or this conference about exemplar data and other things about

1 requests that are being negotiated. None of that is -- was on
2 the docket for today or even for next week, and I'm not sure
3 any of it has any interplay with the macro discovery issues
4 that will be, you know, heard once the plaintiffs have filed
5 their reply. My understanding was we were on schedule to
6 handle these macro issues, and then we would move from there
7 to finalization of the discovery, and then, ultimately, as the
8 manufacturers did, a Court order on that discovery.

9 So I appreciate -- we don't have an objection to
10 expanding the time, and Ms. Whiteley suggests that there are
11 these other issues that we just learned about in a letter that
12 was submitted last night. You know, we discussed them briefly
13 on the 10th, and then these issues were put in the letter last
14 night, to our surprise. And we're happy to discuss those in
15 the interim but -- you know, how they will affect the macro
16 briefing. I don't think they do. I think we put the dates,
17 we put the hearing, and we move forward.

18 We're happy to discuss the other issues, but -- and
19 perhaps they'll have some effect on it. But as far as we
20 know, the macro briefing issues are the macro briefing issues,
21 and that's what's on the table, and we need to get that done
22 before we can move down the line.

23 MS. JOHNSTON: And, your Honor, just briefly, this is
24 Sarah Johnston for the retailer defendants. I would join in
25 what Mr. Geoppinger had to say, and, you know, we don't have

1 an objection if we can find an appropriate date that works for
2 all parties and the Court to hold the hearings. We're
3 certainly open to that and, you know, understanding that they
4 just came in last night and if plaintiffs need some additional
5 time to respond until the 26th, that's fine. But I echo
6 Mr. Geoppinger's statement that I don't believe that there is
7 anything in the brief that we're going to extensively discuss
8 during the meet and confers, at least at to the retailer
9 defendants. But if we're just talking about time and figuring
10 out the hearing date, then we can certainly work that out.

11 MS. WHITELEY: Your Honor, this is Conlee Whiteley.

12 I just wanted to clarify. Ms. Johnston is correct.

13 I was not referring to the retailer brief.

14 One of the main issues here is just the ability to
15 have particularly the wholesalers explain what they have and
16 do not have because if they do not have something, obviously,
17 they can't produce it, and so we would like to narrow that a
18 little bit further, and that's something we weren't able to do
19 during the meet and confer process. But that is part of the
20 reason why we would like that extension.

21 THE COURT: No problem. Perfectly reasonable. No
22 problem moving the deadline for plaintiffs to respond to the
23 briefs that just came in until June 26.

24 Are counsel available July 1, say at 2:00 Eastern
25 Time, just to address this "macro discovery dispute"?

1 MR. SLATER: I certainly am.

2 MS. WHITELEY: I am, your Honor. This is Conlee
3 Whiteley.

4 MR. GEOPPINGER: Your Honor, Jeff Geoppinger for the
5 wholesalers.

6 Obviously, that issue affects, on our side, three
7 wholesalers, not just my client, including other wholesalers,
8 including the wholesaler who is scheduled to make the
9 argument, so I have to -- I'll have to check with my
10 colleagues, if I may, about that date.

11 THE COURT: Well, let's pencil it in and, hopefully,
12 they could make it.

13 MR. GEOPPINGER: Okay.

14 THE COURT: So let me also make this suggestion. For
15 Monday's call, why don't we just wrap up the search term
16 issue? We'll finish just that issue on Monday.

17 And, plaintiff, whatever financial documents issues,
18 sales, cost issues you want to discuss, let's put them on the
19 agenda for the morning of the 24th, and that will give you and
20 the defendants time to talk about that, and give them notice
21 about what issues you want to raise early, like this exemplar
22 issue, with the understanding that we may have to address the
23 issue in more detail at the end of July, after you receive the
24 supplemental productions from Mylan and ZHP. So --

25 MS. WHITELEY: Yes, your Honor.

1 THE COURT: So Monday will just be the wrap-up of the
2 search terms.

3 Wednesday morning will be our usual -- the types of
4 issues we usually address on the monthly calls.

5 Plaintiffs will put the sales and pricing issues that
6 are ripe for discussion in their submission. Defendants will
7 have notice of it.

8 And then a week after that, on July 1, we'll dedicate
9 that call to just the "macro discovery disputes" with the
10 downstream defendants.

11 I think that's a good plan. I think that's a real
12 good plan.

13 UNIDENTIFIED SPEAKER: Thank you, your Honor.

14 THE COURT: You know, it could be that -- I always
15 say this, but it never happens -- but we could wrap up all the
16 search term issues, the macro issues, the sales and pricing
17 issues in July, and then the parties can start focusing on the
18 document production and reviews and, like I said, maybe once
19 we get through the summer, we could start looking forward to
20 planning out some sort of deposition protocol and plan in the
21 case. That would be great.

22 Okay. I'll put this in an order to be entered,
23 counsel. You'll get it.

24 But, for the good of the order, are there any other
25 issues that anyone wants to address?

1 MS. LOCKARD: Your Honor, just a housekeeping matter.
2 Victoria Lockard here again.

3 At some point there was some reference to restarting
4 the monthly conferences in person, but I assume that Wednesday
5 will be by phone. Can you confirm?

6 THE COURT: I'll confirm that. I know the judges are
7 meeting -- I think this week to discuss phase two, but I know
8 for the whole summer, we'd love to see you but we're not going
9 to see you in person.

10 THE LAW CLERK: Excuse me, Judge. This is Lorretta.
11 That conference about phase two was to be held tomorrow but
12 it's been canceled.

13 THE COURT: Okay. Well, we know that at least
14 through August, we're still in phase one, so everything will
15 be done by phone, at least through the summer, and who knows
16 what's going to happen in the fall, counsel? But yes, we will
17 confirm it; for the foreseeable future, everything is going to
18 be done by phone.

19 MS. LOCKARD: Okay. Thank you.

20 THE COURT: We could do it by Zoom but I don't know.
21 Do you think we get any incremental benefit from Zoom rather
22 than conference call, counsel?

23 MR. SLATER: It's hard to say, your Honor.

24 UNIDENTIFIED SPEAKER: Yes, given the number of
25 parties involved, I think it will present technical

1 challenges.

2 UNIDENTIFIED SPEAKER: Agreed.

3 THE COURT: Yes, I'm fine with conference calls. It
4 seems to be working well and we've done lots of Zooms, like
5 you have, and there always seems to be some sort of glitch, so
6 we'll stick with the phone calls. And this number seems to
7 work, so we'll use this number.

8 Okay. So I just want to make sure I got my notes.

9 June 26, plaintiff is going to reply. July 1, we're going to
10 argue it. Monday is just search terms. And I think that's
11 it. Okay? Anything else, counsel, for the good of the order?

12 MR. SLATER: No, your Honor.

13 THE COURT: Okay. And I guess we'll talk on Monday.
14 Like I said, I want to put these agreements in writing so that
15 there is no disputes in the future. So we'll talk about that
16 on Monday.

17 Okay. Thanks, everybody. I guess we're adjourned
18 and thank you for staying late and be safe.

19 (The proceedings concluded at 5:33 p.m.)

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1 I certify that the foregoing is a correct transcript
2 from the record of proceedings in the above-entitled matter.
3

4 /S/ Carol Farrell, NJ-CRCR, FCRR, RDR, CRR, RMR, CRC, CRI
5 Court Reporter/Transcriber

6 June 22, 2020
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